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C O N F I D E N T I A L SECTION 01 OF 04 BISHKEK 001587

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SUBJECT: A SNAPSHOT OF THE NEW KYRGYZ CONSTITUTION

REF: BISHKEK 1586

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Classified By: Amb. Marie L. Yovanovitch, Reason 1.4 (b) and (d).

11. (C) SUMMARY AND COMMENT: On November 9, President Bakiyev signed into law a new constitution, which is effective immediately. The text, which is based on an amended version of the existing constitution, was passed around midnight on Nov. 8 by the Kyrgyz parliament. The result of a compromise between the president and the opposition, agreement on the new text was reached under pressure from mass protests that started on November 2, and the compromise effectively ended the demonstrations. Under the terms of the compromise, the President, the Prime Minister and other elected and appointed officials will be allowed to serve out their existing mandates.

12. (C) The revised constitution shifts some of the president's powers to the parliament and the government, strengthens the independence of the judiciary, and provides an enhanced system of checks and balances among the branches of power. The new constitution also allows for dual citizenship, which the old constitution did not. The changes made to the constitution represent a positive development towards a better balance between the branches of power. However, much will depend on how the new provisions are implemented. END SUMMARY AND COMMENT.

THE NEW OLD CONSTITUTION

13. (U) Around midnight on November 8, the Kyrgyz parliament adopted amendments to the existing constitution with 67 out of 69 votes. Even though many people refer to this document as "the new constitution", in reality it is the old constitution amended to allow for better system of checks and balances. (Note: The existing legislation does not provide for adopting a totally new constitution. End note.)

14. (U) The changes envisage shifting some of the president's powers to the parliament and the government, provide potential for strengthening the independence of the judiciary, and define a better system of checks and balances between branches of power. Early in the afternoon on November 9, the president signed the amendments and the new constitution came into effect. Under the terms of the compromise, the President, the Prime Minister and other elected and appointed officials will be allowed to serve out their existing mandates. Below is post's quick analysis of the new provisions of the constitution. We note that there remains some confusion regarding the final version of some of the clauses in the new constitution.

PRESIDENT'S POWERS CURTAILED

15. (SBU) In the new version, the president's powers are curtailed. Now the president does not nominate the prime minister -) this right goes to a majority party in the parliament. The president also lost his authority to determine the structure of the government and to appoint, members of the government (i.e. the cabinet of ministers). However, the president retains his right to dismiss members of the government. The president lost his authority to establish or disband the National Security Service (SNB) -) this agency becomes a part of the government and its chair now reports to the prime minister, not to the president, as before. In theory, all the ministers now report to the Prime Minister; previously, the President controlled the power ministries (Interior, Defense, Foreign Affairs and the SNB). However, the President retains the responsibility of formulating foreign policy and remains the Commander in Chief of the Armed Forces. The president can no longer establish or abolish executive bodies that are outside the government)

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this authority used to be one of the president's most powerful tools. Previously, the president nominated judges for parliamentary approval; now a new body, the National Council for Judicial Affairs, nominates judges for the Constitutional and Supreme Court, and the president forwards the nominations to the parliament for approval. However, the law establishing the National Council remains to be written. (Comment: Establishment of a National Council for Judicial Affairs is part of the Kyrgyz proposal for an MCA Threshold Country program to increase independence of the judiciary. End Comment.)

16. (U) There was a bitter fight between the president and opposition over the authority to appoint, with the consent of parliament, and to dismiss the General Prosecutor, the chairs of the National Bank, Central Electoral Commission and Auditing chamber, and local judges. In the end, the president retained all of the above authorities, but in the case of appointing local judges, he can appoint them from a pool of names nominated by the National Council for Judiciary Affairs.

17. (U) The new text also eliminates the president's previous right to suspend or annul normative legal acts of the government.

18. (U) The new constitution significantly limits the president's ability dissolve the parliament. The President may dissolve parliament when parliament fails three times to form the government. Previously, the President could dissolve the parliament as the result of a referendum, in the event of three refusals to approve the appointment of a Prime Minister or in the event of "another crisis caused by insurmountable differences between the parliament and other branches of state power." This last catchall provision is eliminated entirely in the new text.

19. (U) Under the new text, the procedure to impeach the president has become much easier: the president can be

removed by two thirds of votes in the parliament on the basis of a parliamentary charge of high treason or commission of another grievous crime. Before, the charge had to be confirmed by a ruling of the Constitutional Court and passed by a four-fifths majority of the total number of deputies. The old text also had a penalty clause) dissolution of the parliament) if the parliament failed to secure concurrence of the Constitutional Court. The Constitutional Court has no role in the impeachment process in the new text; Parliament alone can impeach.

¶10. (U) According to the new constitution, if the president is unable to carry out his duties, the speaker of parliament performs his duties until the election of a new President; previously, the Prime Minister took over the duties. (Note: Parliamentary Speaker Sultanov played a key mediating role in negotiating the compromise text. End note.)

¶11. (U) The new constitution contains a provision precluding an incumbent president from extending his term in office or re-election to a new term if changes to the constitution are made.

PARLIAMENT BECOMES LARGER AND STRONGER

¶12. (U) The number of deputies increased from 75 to 90, and half of them are to be elected by party lists.

¶13. (U) The party that receives over 50% of seats to which deputies are elected by party lists (i.e., at least 23 seats), nominates the prime minister and forms the government. If none of the parties gets at least 23 seats, the president designates the majority party that will nominate the prime minister and form the government; if the

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majority party is unable to do this within 14 days, the right to form the government goes to the second largest party. If this second party fails, then the right goes to the third largest party. If the third largest party does not form the government, the president may dissolve the parliament and form a government, which will operate until the new Parliamentary elections are held and a newly elected parliament forms a new government.

¶14. (U) In the new constitution, the number of committees in the parliament is not specified; previously, it was limited to 7 committees.

¶15. (U) Now the presence of a majority of deputies at a parliamentary meeting is sufficient for a quorum; previously, the presence of two thirds of deputies was required for a quorum.

¶16. (U) The parliament can express a vote of no confidence in the government by a simple majority vote; previously, no less than two-thirds of the total number of deputies was required. The president can either agree to dismiss the government or disagree with the decision of the parliament. In the latter case, the government remains in power. If within three months the parliament again expresses a vote of no confidence, the president must either dissolve the parliament or dismiss the government.

¶17. (U) The old constitution did not have a clear provision when deputies could be deprived of their parliamentary mandate if they systematically miss meetings of the parliament without any good reason during one session; now a threshold of 45 working days is introduced.

GOVERNMENT BECOMES MORE INDEPENDENT OF THE PRESIDENT

¶18. (U) Now the government is responsible and accountable to the parliament; previously, the government was responsible

to the President and accountable to the parliament.

¶19. (U) Now the prime minister determines the structure, nominates government ministers and offers them for parliamentary approval.

JUDICIARY

¶20. (U) The new constitution envisages a new body - the National Council for Judiciary Affairs (NCJA), which will consist of equal numbers of judges, members of the parliament and representatives of civil society. Operation and authorities of NCJA will be outlined in a separate law.

¶21. (U) Judges of local courts will be appointed or dismissed by the president at the nomination of NCJA; the first appointment will be for the period of 5 years, and for 10 years thereafter. Before, local judges were appointed by the president with the consent of the parliament for a term of 7 years.

¶22. (U) Now a judge of the Constitutional Court or the Supreme Court may be dismissed from his office before the end of the term by no fewer than two-thirds of the total number of deputies of the parliament upon the nomination by the President only if it is supported by NCJA.

DUAL CITIZENSHIP

¶23. (U) The new constitution allows for dual citizenship, which the previous constitution did not.

OTHER SIGNIFICANT CHANGES

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¶24. (U) The preamble of the constitution defines Kyrgyzstan as "a sovereign, unitary, democratic, based on the rule of law, social state"; the previous definition also contained the word "secular".

¶25. (U) According to the new constitution, changes to it can be made by the parliament; the old constitution allowed for adoption of changes through a referendum. The new constitution retains a provision requiring that proposals to introduce amendments and supplements to the Constitution are considered by the parliament, taking into account the ruling of the Constitutional Court, no earlier than three months and no later than six months from the day of submission of the proposal to the parliament.

¶26. (U) The new constitution contains a section on a transition period, during which the current president and parliament, judges of the Supreme Court, the Constitutional Court and local courts, chairs of the National Bank, Central Electoral Commission and Auditing Chamber, the General Prosecutor and Ombudsman, mayors and local governments remain in their offices until the end of the term to which they were elected or appointed. The existing legislation will remain in force until it is brought in compliance with the new provisions of the constitution, if needed.

THE THORNY LANGUAGE ISSUE

¶27. (U) The constitution was written and adopted in the Russian language; now it is to be translated in Kyrgyz.
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